

## COMMITTEE REPORT

### MR. PRESIDENT:

The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 478, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1       Page 1, between the enacting clause and line 1, begin a new  
2       paragraph and insert the following:  
3       "SECTION 1. IC 23-2-5-10, AS AMENDED BY P.L.14-2000,  
4       SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5       JULY 1, 2003]: Sec. 10. (a) **Whenever it appears to the**  
6       **commissioner that a person has engaged in or is about to engage in**  
7       **an act or a practice constituting a violation of this chapter or a rule**  
8       **adopted or an order issued under this chapter, the commissioner**  
9       **may investigate and may issue:**  
10       (1) **with a prior hearing if there exists no substantial threat of**  
11       **immediate irreparable harm; or**  
12       (2) **without a prior hearing if there exists a substantial threat**  
13       **of immediate irreparable harm;**  
14       **orders and notices the commissioner determines to be in the public**  
15       **interest, including cease and desist orders, orders to show cause,**  
16       **and notices. After notice and hearing, the commissioner may enter**  
17       **an order of rescission, restitution, or disgorgement, including**  
18       **interest at the rate of eight percent (8%) per year, directed to a**  
19       **person who has violated this chapter or a rule or order under this**  
20       **chapter.**  
21       (b) **Upon the issuance of an order or notice without a prior**

hearing by the commissioner under subsection (a)(2), the commissioner shall promptly notify the respondent:

- (1) that the order or notice has been issued;
- (2) of the reasons the order or notice has been issued; and
- (3) that upon the receipt of a written request the matter will be set down for a hearing to commence within forty-five (45) business days after receipt of the request unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny, suspend, or revoke the license of a licensee or the registration of a registrant if the licensee or the registrant:

- (1) fails to maintain the bond required under section 5 of this chapter;
- (2) is insolvent;
- (3) has violated any provision of this chapter;
- (4) has knowingly filed with the commissioner any document or statement containing any false representation of a material fact or omitting to state a material fact or if a representation becomes false after the filing but during the term of a license or certificate of registration as provided in subsection ~~(e)~~; (g); or
- (5) has been convicted, within ten (10) years before the date of the application, renewal, or review, of any crime involving fraud or deceit.

~~(b)~~ (d) The commissioner may not enter a final order denying, suspending, or revoking the license of a licensee or the registration of a registrant without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a license or certificate of registration pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested parties that it has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a

party, the matter will be set for hearing to commence within fifteen (15) business days after receipt of the request. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

~~(e)~~ (e) IC 4-21.5 does not apply to a proceeding under this section.

~~(d)~~ (f) If:

(1) a licensee desires to have a previously unregistered employee begin engaging in origination activities; or

(2) an individual who was previously registered under this chapter is employed by another licensee who desires to have the registrant engage in origination activities;

the employer licensee shall, within fifteen (15) days after the employee first conducts origination activities, submit to the commissioner, on a form prescribed by the commissioner, notice of the registrant's employment. If the employee has not previously been registered, the licensee shall submit evidence that the employee has completed the education requirements of section 21 of this chapter.

~~(e)~~ (g) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure or registration under this chapter as a result of a change in material fact or statement."

Page 4, between lines 5 and 6, begin a new line double block indented and insert:

**"(D) A prepayment fee or penalty may not exceed two percent (2%) of the net unpaid balance as of the date of the prepayment."**

Page 4, line 20, after "credit" insert **"history"**.

- 1 Page 4, line 21, delete "loan-to-value" and insert "**amount of your**
- 2 **home's value that you wish to borrow,**".
- 3 Page 4, line 22, delete "requested,".
- 4 Page 4, line 31, delete "1-888-466-3487" and insert
- 5 "\_\_\_\_\_ (**insert telephone number**)".
- 6 P a g e 4 , l i n e 3 2 , d e l e t e
- 7 "www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm" and insert
- 8 "\_\_\_\_\_ (**insert web address**)".
- 9 Page 5, line 17, delete "engage in a" and insert "**extend**".
- 10 Page 5, line 18, delete "pattern or practice of extending".
- 11 Page 5, line 23, delete "engages in a pattern or practice of making"
- 12 and insert "**makes a**".
- 13 Page 5, line 24, delete "loans" and insert "**loan**".
- 14 Page 5, line 37, delete "stated income".
- 15 Page 5, line 37, after "loan" insert "**based on the borrower's**
- 16 **statement of the borrower's income**".
- 17 Page 6, line 1, delete "stated income".
- 18 Page 6, line 2, after "loan" insert "**based on the borrower's**
- 19 **statement of the borrower's income**".
- 20 Page 6, line 4, after "a covered loan" insert ".".
- 21 Page 6, line 5, delete "unless the refinancing is in the obligor's
- 22 interest.".
- 23 Page 6, line 8, after "another covered loan" insert ".".
- 24 Page 6, line 9, delete "unless the refinancing is in the obligor's
- 25 interest.".
- 26 Page 6, line 28, after "other" insert "**subsidized**".
- 27 Page 6, line 29, after "years of the" insert "**subsidized**".
- 28 Page 6, line 31, delete "'low" and insert "'**subsidized low**".
- 29 Page 6, line 38, after "is a" insert "**subsidized**".
- 30 Page 7, between lines 4 and 5, begin a new paragraph and insert:
- 31 "**(k) A lender may not recommend or encourage default on an**
- 32 **existing loan or other debt before or in connection with the closing**
- 33 **or planned closing of a covered loan that refinances all or any part**
- 34 **of the existing loan or debt.**
- 35 **(l) A lender may not charge a fee for informing or transmitting**
- 36 **to a person the balance due to pay off a covered loan or to provide**
- 37 **release upon prepayment. A lender must provide a payoff balance**
- 38 **not later than seven (7) business days after the request is received**

- 1 **by the lender."**
- 2 Page 7, line 5, delete "(k)" and insert "**(m)**".
- 3 Page 7, line 5, after "knowingly" insert "**and intentionally**".
- 4 Page 7, line 24, delete "one (1) year" and insert "**two (2) years**".
- 5 Page 7, line 25, delete "It is the intent of the general assembly that
- 6 persons".
- 7 Page 7, delete lines 26 through 30.
- 8 Page 7, line 39, delete "fraud" and insert "**violations of this article**".
- 9 Page 7, line 40, delete "lending." and insert "**loans that are covered**
- 10 **under this article and mortgage loans that are not covered under**
- 11 **this article."**
- 12 Page 7, line 42, delete "fraud" and insert "**violations of this article**".
- 13 Page 7, line 42, delete "lending." and insert "**loans that are covered**
- 14 **under this article and mortgage loans that are not covered under**
- 15 **this article."**
- 16 Page 8, line 2, delete "fraud" and insert "**violations of this article**".
- 17 Page 8, line 3, delete "lending." and insert "**loans that are covered**
- 18 **under this article and mortgage loans that are not covered under**
- 19 **this article."**
- 20 Page 8, line 5, delete "fraud" and insert "**violations of this article**".
- 21 Page 8, line 6, delete "lending." and insert "**loans that are covered**
- 22 **under this article and mortgage loans that are not covered under**
- 23 **this article."**
- 24 Page 8, line 26, delete "fraud" and insert "**violations of this article**".
- 25 Page 9, between lines 1 and 2, begin a new paragraph and insert:
- 26 "**Sec. 5. The attorney general may bring an action to enjoin a**
- 27 **violation of this article. A court in which the action is brought may:**
- 28 **(1) issue an injunction;**
- 29 **(2) order a person to make restitution;**
- 30 **(3) void or limit the application of obligations that violate this**
- 31 **article;**
- 32 **(4) order a person to reimburse the state for reasonable costs**
- 33 **of the attorney general's investigation and prosecution of the**
- 34 **violation of this article; and**
- 35 **(5) impose a civil penalty of not more than fifteen thousand**
- 36 **dollars (\$15,000) per violation.**
- 37 **Sec. 6. (a) A person who violates an injunction issued under**
- 38 **section 5 of this chapter must pay a civil penalty of not more than**

1       fifteen thousand dollars (\$15,000) per violation.

2       (b) The court that issues an injunction under section 5 of this  
3 chapter retains jurisdiction over a proceeding seeking imposition  
4 of a civil penalty under this section.

5       (c) The attorney general, acting in the name of the state, has the  
6 exclusive right to petition for imposition of a civil penalty under  
7 this section.

8       (d) If a court determines that a person:

9           (1) has violated an injunction issued under section 5 of this  
10 chapter; and

11           (2) must pay a civil penalty;

12 the court shall also require the person to reimburse the state for  
13 reasonable costs related to bringing an action under this section."

14       Page 9, line 2, delete "5." and insert "7."

15       Page 9, line 29, after "department" insert "of financial institutions".

16       Page 10, line 6, delete "is credited to the" and insert "shall be  
17 distributed as follows:

18           (1) Fifty percent (50%) to the attorney general for use in  
19 mortgage fraud enforcement under section 3 of this chapter.

20           (2) Fifty percent (50%) to the department of education for  
21 financial literacy training and programs under section 2 of  
22 this chapter."

23       Page 10, delete lines 7 through 15.

24       Page 10, line 16, before "department" begin a new paragraph and  
25 insert:

26       "Sec. 2. The fee allocation under section 1(2) of this chapter shall  
27 be distributed on a quarterly basis to the".

28       Page 10, line 19, delete "budgeting, insurance, investing, managing  
29 credit, financial" and insert "home buying and mortgage lending."

30       Page 10, delete lines 20 through 22.

31       Page 10, line 23, before "mortgage" begin a new paragraph and  
32 insert:

33       "Sec. 3. The fee allocation under section 1(1) of this chapter shall  
34 be distributed on a quarterly basis to the".

35       Page 10, between lines 24 and 25, begin a new paragraph and insert:

36       "Sec. 4. (a) An allocation of seventy-five thousand dollars  
37 (\$75,000) consisting of the increased fees under this chapter shall  
38 be made to the legislative services agency before any fee revenue

1        may be allocated to the mortgage fraud unit of the attorney  
2        general's office or the department of education. The seventy-five  
3        thousand dollar (\$75,000) allocation shall be used to contract with  
4        the Kelly School of Business at Indiana University to conduct a  
5        study of the causes of the high rate of foreclosure in Indiana during  
6        2001 and 2002.

7        (b) The results of the study shall be reported in writing to the  
8        legislative services agency not later than December 31, 2004. The  
9        legislative services agency shall distribute the report to the  
10       legislative council, the department of financial institutions, and the  
11       attorney general."

12       Renumber all SECTIONS consecutively.  
      (Reference is to SB 478 as introduced.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 9, Nays 0.

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**Paul**

**Chairperson**